

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL SECOND APPEAL No. 6 of 1987

KARNI SINGH
V/S
R.S.E.B.

Mr. VIJAY BISHNOI for Mr. RN BISHNOI, for the appellant

Mr. MANISH SHISHODIA, for the respondent

Date of Order : 27.11.2006

HON'BLE SHRI N P GUPTA, J.

JUDGMENT

This appeal has been filed by the plaintiff, whose suit has been dismissed by both the learned courts below.

The facts of the case are, that on 2.4.1980, the plaintiff filed the present suit for perpetual injunction, praying that the defendants be restrained from disconnecting the power supply on the plaintiff's tube well as described in para-3 of the plaint. The other relief claimed was, that the demand raised by the defendant in disputed bill (Ex. 2) is illegal and unenforceable. The factual averments in this regard are, that the plaintiff purchased the tube well and the land from one Prem Singh, and the tube well was having energy connection of 25 H.P. in the name of Prem Singh, Account No. thereof was 1 Ja/346. According to the plaintiff since he has started

receiving sufficient amount of water from canal, and needed less water from the tube well, while according to the stipulations he had to pay Rs. 175/- per year per Horse Power as minimum charges, which was proving uneconomic, therefore, the plaintiff installed a 7.5 H.P. Motor Pump, and in that regard L-Form was submitted to the defendant on 22.7.1976, and information of load reduction was also given to defendant. Thus, according to the plaintiff he is using the motor pump of the capacity of 7.5 H.P. within the knowledge, and with the consent, of the defendant. It is then alleged that the plaintiff received a bill of energy charges of the month of March, 1977 for a sum of Rs. 3731.40, which was issued treating the energy connection to be of 25 H.P., and therefore, since the defendants were insistent on disconnecting the energy supply, therefore, he filed a suit for perpetual injunction, but then, later on the defendants assured that they will appropriately modify the bill, and will not demand the minimum guarantee on the basis of 25 H.P., but then that can be done only if the plaintiff withdraws the suit, therefore, the plaintiff got the suit dismissed in default of appearance on 25.5.1979, but then the plaintiff was sent a bill for the month of May, 1979 including therein a sum of Rs. 10,914/-, being the arrears of demand, and on enquiry it was revealed, that this amount represents the minimum charges calculated on the basis of energy connection of 25 H.P. Then, he invited attention of the defendants on the application and L-Form,

but still to no good. According to the plaintiff he never consumed the electricity supply for 25 H.P., and thus the demand is illegal. Inter alia these are the allegations on the basis of which the above reliefs are claimed.

The defendants, on the other hand, submitted that the account continues in the name of Prem Singh, and that the plaintiff never installed the motor on 22.7.1976, within the knowledge, and with the consent, of the defendant, rather in their records the energy supply connection continues to be 25 H.P. It was also pleaded that the plaintiff earlier filed a suit alleging this very controversy, which suit has been dismissed for non prosecution, and therefore, he is debarred from maintaining the present suit. The other stand taken was, that the plaintiff has filed the application on 27.1.1976, which was being processed. Thus, it was prayed that the suit be dismissed. In additional pleas also, in different forms, this very stand was repeated. However, it was pleaded in para-17, that on application being filed for reduction of load, the matter is verified by the Executive Engineer on spot, then the matter is forwarded with recommendation to Superintending Engineer, and on receipt of sanction from him, and on the reduced load being found on the spot to be correct, on enquiry by the Assistant Engineer, the sanction becomes effective. Thus, according to the defendant, the load was not reduced.

The learned trial court dismissed the suit. Issue no. 1 was decided against the plaintiff by discussing the evidence, and the terms of the agreement entered into between the parties, and it was found, that the sanction was given for reduction of load on 9.4.79, and before that, if the plaintiff voluntarily reduced the load, he is not entitled to any benefit, and that no legal provisions have been shown in this regard, that by voluntary reduction of load, the plaintiff would be entitled to exemption from the minimum charges applicable on sanctioned connection load. It was also found, that it is not established, that the plaintiff is using the reduced power load, within the knowledge and with the consent of the defendants. Then, it was also found, that there is no provision that the application for reduction of load is to be decided within a particular limit of time. Thus it was found, that the dispute is not bonafide. Then, deciding the issue no. 5 relating to the effect of dismissal of the previous suit, it was found, that the previous suit comprehends the controversy about the bill of March, 1977 only, and in the present suit different bill is challenged, and therefore, that suit does not debar the plaintiff from maintaining the present suit. The other issues being issues no. 2, 3 and 4 regarding jurisdiction, entitlement of the plaintiff to get injunction, and sufficiency of the court fees, were decided as preliminary issues.

In appeal, the learned lower Appellate Court framed one question for determination, being as to whether from the plaintiff's submitting L-Form for reduction of connected load, it shall be deemed that he will continue to be liable for electricity charges as per the connection load only, and then after discussing the evidence it was found, that the application for reduction of load was filed earlier, being Ex.A-1, so also L-Form, but then, from submitting application and L-form only it cannot be said that connected load was reduced, as reduction in connected load is to be by consent of both the parties, and before sanctioning reduction, very many things are to be enquired into, and taking into account various aspects, then only an appropriate order is to be passed. It was found, that though L-Form was given on 22.7.1976 (sic 22.1.1976), the load was not reduced for very long time, (Even according to the plaintiff's statement the load was reduced from 22.7.1976), and the sanctioned load was reduced by the defendants after filing of the suit. It was noticed, that such a long period should not have been consumed by the defendant, but then merely from that it cannot be said that the load automatically stood reduced before sanction of reduction in the load. Then, the circular of the defendant, being dated 2.12.1975 was also referred to and relied upon. Inter alia with these findings, the judgment and decree of the learned trial court was upheld.

The present appeal was admitted on 9.1.1987, by framing following two substantial questions of law:-

1. Whether the conduct of the respondent, in allowing the plaintiff to use 7 ½ H.P. Motor in place of 25 H.P. Motor after submitting 'L' form, amounts to implied consent to the reduction of the sanctioned load?

(2) Whether the non-payment of the minimum guarantee for 25 H.P. load in the circumstances of the case amounts to refusal to pay?

At the outset it may be observed, that so far as question no. 2 is concerned, a look at the statement of D.W.1 shows, that even according to him payment had been made by the plaintiff. Therefore, I need not detain myself on question no.2.

Then, the only surviving question is question no.1. It would suffice to say, that to substantiate this question no legal authority was cited on the side of the appellant. That is one aspect of the matter. Even otherwise I have examined the record, and find, that from the material on record, the plaintiff is not entitled to the reliefs claimed. It is significant to note, that even according to the plaintiff, as alleged in para-5 of the plaint, that he substituted the motor of less horse power on 22.7.1976, and submitted an application for reduction of load on 22.7.1976, while Ex.A-1 and A-2 the application and

L-Form are respectively of 22.1.76, and not of 22.7.76.

Thus, even according to the plaintiff, as alleged in the plaint, the load was reduced on 22.7.76, then it cannot be said that by mere submitting of application and/or L Form, the load has been reduced from the date of submission of application and L-form i.e. 22.1.76. In the plaint the plaintiff himself also does not claim reduction from 22.1.76.

Yet another aspect of the matter is, that as I find from record, that there is an order produced by the defendant being Ex.A-4. It may be observed that Ex. A-4 has been marked on two documents; one being office order dt. 19.8.82, and the other being agreement executed by Prem Singh on Feb.1971, though for the present purpose I am referring to Ex.A-4 dt. 19.8.82, a look thereat shows, that thereby the sanction was conveyed for reduction of connected load from 25 to 7.5 H.P., w.e.f. 9.4.79. Then, I also find on record the application of the plaintiff, being Ex.-3, this is dated 25.3.82, i.e. of a date much prior to Ex.A-4, and in this application the plaintiff has written, that his reduced load is sanctioned since 9.4.79, but then in the office papers it is still continuing to be of 25 H.P., and therefore, the charges should be charged by treating the load of 7.5 H.P. since after 9.4.79, and had also volunteered to deposit all charges for capacitor etc. Admittedly, even after filing of the suit, which was

filed on 30.5.1979, as noticed above, and it was decided on 30.9.1982, and even thereafter, at no stage, it is brought on record by the plaintiff, that his connected load has been reduced from 9.4.79, and over and above all this, this has never been the grievance of the plaintiff anywhere so far, that this reduction of connected load should not have been sanctioned from 9.4.79 but from any other anterior date. The collective reading of Ex.-3 and Ex.A-4 dt. 19.8.82 does show, that the plaintiff was well aware at least in 1982, that his connected load has been reduced from 9.4.79, and even thereafter this order has not been challenged, claiming reduction of load from any anterior date, rather vide Ex.-3 the only prayer made was, that the reduction should be effected in the records from 9.4.79, and charges should have been claimed at the reduced rate from 9.4.79. That being the position, in my view, unless the order sanctioning reduction of load from 9.4.79 is challenged, claiming that the reduction should have been from any anterior date, the plaintiff cannot be said to be entitled to any relief as claimed in the plaint.

Thus, considering from any stand point, in my view, question no. 1 as framed is required to be answered against the appellant, and is accordingly answered so.

The appeal thus has no force, and is dismissed. The parties shall bear their own costs.

(N P GUPTA), J.

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